



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR DIRECTOR, ADVISORY, INSOLVENCY AND QUALITY

FROM: Frederick W. Schindler /s/ Laura Hostelley (*for*)
Director, Collection Policy

SUBJECT: Frivolous Damage Claims Under IRC § 7433

The purpose of this memorandum is to reissue the interim guidance memorandum dated July 7, 2008, with control number SB/SE-25-0708-034, titled Frivolous Damage Claims Under IRC 7433 and to clarify procedures relating to the receipt of the Internal Revenue Code (IRC) section 7433 administrative claims when the IRC § 7433 claims appear to contain frivolous allegations or arguments. Taxpayers may maintain a lawsuit under IRC § 7433 if they first exhaust their administrative remedies by filing an administrative claim. To defend against an IRC § 7433 lawsuit, the Internal Revenue Service (IRS) therefore must be able to determine whether taxpayers have filed an administrative claim. If the IRS does not respond to a frivolous claim, there is a risk that a court will deem the frivolous claim as meeting the requirements for filing an administrative claim. As a result, advisors should not be forwarding IRC § 7433 frivolous claims to the Ogden Frivolous Return Program (also known as the Frivolous Filer Unit) without first processing the claim in accordance with the procedures set forth in Internal Revenue Manual (IRM) 25.3.3.5.1 and IRM 25.3.3.5.2. If questions arise as to the nature of a claim for damages and its proper disposition, Area Counsel should be consulted.

Damage Claims Under IRC § 7433

Under Treas. Reg. § 301.7433-1(a), an action for damages for unauthorized collection action may not be maintained in federal district court unless the taxpayer has filed an administrative claim. Under Treas. Reg. § 301.7433-1(e), an administrative claim must be sent in writing to the Area Director, Attn: Compliance Technical Support Manager (now known as the Advisory Group Manager) of the area in which the taxpayer currently resides. Generally, the IRS has six months to consider the claim before the taxpayer can file a court action. See Treas. Reg. § 301.7433-1(d).

SB/SE Counsel has informed us that taxpayers in some jurisdictions have been filing frivolous claims alleging that they were injured by some collection action. These frivolous claims were forwarded to the Ogden Frivolous Return Program without any response being sent to the taxpayer. This creates a problem in litigation because a taxpayer may only maintain a suit under IRC § 7433 if the taxpayer has filed an administrative claim, and if a claim that appears to be frivolous is not processed, the IRS cannot determine if the taxpayer has filed an administrative claim. If Counsel can prove that no administrative claims have been filed, a court may summarily dismiss a lawsuit based on the taxpayer's failure to exhaust administrative remedies; if Counsel cannot so prove, because insufficient records are kept of administrative claims, Counsel may be forced to argue the merits of the lawsuit. In order to ensure that Counsel has the necessary documents and information to defend the government's interests in these cases, Advisory must process all claims that appear to be brought under IRC § 7433, whether or not they appear to be frivolous.

Processing Frivolous IRC § 7433 Claims

The procedures for processing IRC § 7433 claims are set forth in IRM 25.3.3.5.1, Administrative Claim Procedures, and IRM 25.3.3.5.2, Evaluation of a Claim for Damages Under IRC § 7433. All claims are to be date stamped upon receipt, and a NF OI is to be opened on Integrated Collection System (ICS) under action code 185 - Claim Other. This is a correction to IRM 25.3.3.5.2, which states that action code 101 is to be used. Advisory is to review each claim to ensure that it includes the information required under the regulations. If the claim does not contain the required information, Advisory is to notify the taxpayer within 14 days of receipt of the claim that it is deficient and not processable. Letter 2730, Non-processable Claim for Damages Letter, is to be used to notify the taxpayer of the deficiencies in the claim. If a claim contains all of the required information, but includes frivolous claims or arguments, the claim must be processed. Use Letter 2732, Notification of Full or Partial Denial of Claim for Civil Damages, or Letter 2733, Notification of Full or Partial Allowance of Claim for Civil Damages, to notify the taxpayer of the results of the administrative review of the claim. These procedures should be followed for any correspondence received from a taxpayer that indicates in some fashion that the taxpayer is attempting to file a claim for damages for unauthorized collection action.

If a claim for unauthorized collection action appears to contain frivolous arguments, the following documents/information should be sent to the Ogden Frivolous Return Program after the claim is processed:

- copies of the first two or three pages of the claim (or a sufficient number of pages to show that the claim is frivolous);
- the date of receipt of the claim (this should be shown by a date stamp on the claim);
- the taxpayer's name, address, and any taxpayer identification information that may be provided in the claim; and
- a copy of the response sent to the taxpayer.

Prepare Form 3210, Document Transmittal, and include the Ogden Compliance Campus address: 1973 N. Rulon White Blvd., M/S 4450, Ogden, UT 84404, Attention: Frivolous Return Program. IRM 25.3.3.5.1 will be revised to incorporate these procedures relating to frivolous claims. Any questions as to whether a claim is being asserted under IRC § 7433 and should be processed under these procedures should be directed to Area Counsel.

Additionally, please note that the forms to be submitted to the Judgment Funds Branch of Financial Management Service (FMS) have been revised and the address for sending these forms has changed. These changes have not yet been incorporated into IRM 25.3.3.5. If a claim for damages is approved, prepare the following:

- FMS Form 194 (Rev. 12-03) - Judgment Fund Transmittal
- FMS Form 196 (Rev. 12-03) - Judgment Fund Award Data Sheet
- FMS Form 197 (Rev. 12-03) - Judgment Fund Voucher for Payment

These FMS forms are available in fillable formats at the Electronic Publishing website at <http://publish.no.irs.gov/catlg.html>. Under "View by Product Title Search," select product type "other gov" and enter search word(s) "FMS." Forward the original FMS Form 197 to the taxpayer for signature under cover of Letter 2733. If a portion of the claim is approved, issue Letter 2732 and Letter 2733 at the same time. The approving official will sign FMS Form 197 when it is received from the taxpayer. Send the taxpayer a copy of the signed FMS Form 197. Use Letter 2734 to forward the original forms described above to the Judgment Funds Branch, Financial Management Service, Department of the Treasury, 3700 East-West Hwy, Room 6E15, Hyattsville, MD 20782. Keep a copy of the forms sent to the Judgment Funds Branch in the file. Record any information received from FMS regarding payment to the taxpayer on ICS.

Please ensure that this information is distributed to all affected employees within your organization. If you have any questions concerning this memorandum, please feel free to contact me, or a member of your staff may contact Delores Dillmann, Program Analyst, Collection Policy.

cc: Office of Associate Chief Counsel (Procedure and Administration)
Office of Chief Counsel, SB/SE
Director, Collection